

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LUCAS CALIXTO, et al.

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
THE ARMY, et al.¹,

Defendants.

Civil Action No.18-1551 (ESH)

DEFENDANTS' STATUS REPORT

In accordance with the Court's Order entered on August 13, 2018 (ECF No. 23), Defendants respectfully submit this bi-weekly status report. The Court's order requires Defendants to provide bi-weekly status reports "with any updates regarding [1] the Army's policy with respect to administrative separation procedures applicable to DEP and DTP members, as well as [2] any intention to discharge any DEP or DTP members in accordance with this policy." Order (ECF No. 23) at 2.

1. The Army's October 26, 2018 policy memorandum (ECF No. 50-1), with regard to MAVNIs who receive unfavorable MSSRs and/or MSSDs, remains in effect and has not been changed or otherwise amended.

2. As noted in Defendants' Notice Regarding Defendants' Production of Files in

¹ The Defendants in this case are the United States Department of the Army and Mark Esper, in his official capacity as Secretary, U.S. Department of the Army. Mark Esper is no longer Secretary of the Army. Pursuant to Federal Rule of Civil Procedure 25(d), Ryan D. McCarthy, the current Acting Secretary of the Army, is automatically substituted as the Defendant in this action for former Secretary of the Army Dr. Mark T. Esper.

Accordance with the Court's June 25, 2019 Order (ECF No. 113), the United States Army Reserve Command (USARC) recently reported that only 13 DTP MAVNI recruits had been discharged from the U.S. Army for non-MSSD reasons between September 30, 2016 and May 30, 2019 because, during that time period, only 13 DTP MAVNIs had been identified as receiving both a United States Army Recruiting Command (USAREC) discharge order and a USARC discharge order. Prior to the hearing on July 31, 2019, USARC identified 2 additional DTP MAVNI recruits who received both USAREC and USARC discharge orders, for a total of 15. Between July 31, 2019 and August 2, 2019, USARC identified 3 additional DTP MAVNI recruits who received both USAREC and USARC discharge orders between September 30, 2016 and May 31, 2017 for non-MSSD reasons. In accordance with the Court's July 31, 2019 Order, Defendants provided the additional names to Plaintiffs' counsel on August 2, 2019, and will inform the Court and Plaintiffs by August 7, 2019 whether the Army plans to reinstate these 18 MAVNIs for purposes of receiving procedures described in AR 135-178. DTP MAVNI recruits identified during the USARC review of DTP discharges as not having received a USARC discharge order and, thus not discharged from the U.S. Army Reserve will, if processed for separation, be processed according to the applicable procedures outlined in AR 135-178.

3. As of the date of this report, the Army has not initiated any administrative separations pursuant to the October 26, 2018 policy memorandum (ECF No. 50-1).

Dated: August 5, 2019

Respectfully submitted,

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